

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

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2011 APR 22 P 3:27

Thomas Mitchell Stutts, #241619, )  
)  
Petitioner, )  
)  
v. )  
)  
Robert M. Stevenson, III, Warden )  
of Broad River Correctional Institution, )  
)  
Respondent. )

Civil Action No. 8:11-191-SB

ORDER

This matter is before the Court upon Petitioner Thomas Mitchell Stutts' pro se complaint, which was filed on January 24, 2011. In his complaint, which is not on a court-approved form, Stutts seeks to appeal the South Carolina Supreme Court's denial of his "notice of appeal" in a state habeas corpus matter, and he also complains about matters concerning his confinement, such as mail irregularities and his alleged harassment by a prison guard. Pursuant to local rule, this matter was referred to a United States Magistrate Judge for preliminary determinations.



On February 4, 2011, Magistrate Judge Robert S. Carr issued a "proper form order," directing Stutts to submit an amended petition on the standard section 2254 form as well as a motion to proceed in forma pauperis. Stutts filed a motion to proceed in forma pauperis but did not submit an amended petition on the proper form. Instead, on March 1, 2011, Stutts filed a motion to stay, indicating that this case is a "miscellaneous appeal" of the South Carolina Supreme Court's order and that he is not submitting a petition for a writ of habeas corpus under section 2254 because he has many other issues to raise.

On March 18, 2011, Magistrate Judge Jacquelyn D. Austin issued a report and

recommendation ("R&R") analyzing Stutts' filings and recommending that the Court dismiss this case without prejudice and without issuance and service of process, and that the Court deny a certificate of appealability. In the R&R, the Magistrate Judge noted that the district court lacks jurisdiction over Stutts' "miscellaneous appeal" from the South Carolina Supreme Court and also that Stutts may obtain forms from the Clerk's Office in Columbia if he wishes to present civil rights claims in another action.

On April 5, 2011, Stutts filed objections to the R&R, asserting that the Magistrate Judge erred in stating that he had not filed a direct appeal or a post-conviction relief application. Again, however, the Petitioner asserts that he has not brought this action on the section 2254 form because this is a "miscellaneous appeal" of the South Carolina Supreme Court's decision on his petition for a writ of habeas corpus.

Subsequently, on April 11, 2011, Stutts filed a motion "to have 180 days to prepare his federal habeas corpus relief available under 28 U.S.C. § 2254" so that he may keep the same civil action number. (Entry 28.)

Here, the Court agrees with the Magistrate Judge that the Court does not have jurisdiction over Stutts' complaint as it stands. Nevertheless, in his recent motion, Stutts has in effect requested additional time to bring his case into proper form, and the Court believes that it would be inappropriate to adopt the R&R in light of this request. Thus, the Court declines to adopt the R&R at this time and instead grants (in part) Stutts' motion for an extension of time to submit a proper section 2254 petition. The Court reiterates that it does not have jurisdiction over Stutts' "miscellaneous appeal" as it stands and that Stutts will need to obtain civil rights forms from the Clerk's Office and proceed in a separate civil action if he wishes to complain about the conditions of his confinement. However, in light

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of Stutts' recent assertion that he wishes to prepare a section 2254 petition, the Court will grant him an additional **sixty (60)** days from the date of this order to submit a proper section 2254 petition. The Court specifically notes that Stutts' failure to comply with this order will result in the dismissal of this action.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Sol Blatt, Jr.  
Senior United States District Judge

April 20, 2011  
Charleston, South Carolina

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